

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2008-093717

06/07/2011

HON. M. JEAN HOAG

CLERK OF THE COURT
C. Towles
Deputy

IN RE THE MARRIAGE OF
KATHRYN ISSA

STASY D CLICK

AND

VICTOR ISSA

VICTOR ISSA
2311 E HAZELTINE WY
CHANDLER AZ 85249

UNDER ADVISEMENT RULING

This matter having been under advisement, the Court now rules.

The Court has received a filed document from Father, received May 17, 2011, and counsel for Mother is endorsed on this document. It is entitled "Objection to Trial Closing and Request for Addition Trial Entry (sic)." The Court overrules the objection. The Court notes that Exhibit 24 is in evidence and the Court has reviewed it. The Court notes Exhibit 18 is not in evidence as it was not admitted at trial. Father's Affidavit of Financial Information was filed January 8, 2010, and the Court has reviewed that as well.

The parties were married October 31, 2001.

Mother requests to be restored to her maiden name.

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The parties have three children: Kaitlyn (DOB: 10/16/03), Sarah (DOB: 05/31/06), and Faith (DOB: 08/23/07). Mother is requesting sole custody of the three girls for “the safety of the girls.”

The parties moved to California in September of 1999. Mother testified they moved into a home for which they never paid rent. The parties became engaged on Easter of 2000.

Mother worked outside the home for a short while after marriage, perhaps one year.

Mother moved to Arizona in November of 2008 due to domestic violence in marriage.

Mother testified that over the course of the marriage, Father threatened her, harassed her, threw things (a stand-up fan she recalls most vividly when she was eight months pregnant), and controlled her by limiting her time with her friends and how she spent money. On two occasions, he choked her. Mother testified she was awakened while nursing Kaitlyn when she felt Father’s hand on her neck.

At one point in 2002, Father emailed Mother’s boss asking for a three-day weekend and, subsequently, she states she was laid off due to this phone call. At that time, she worked for a telephone media company.

Mother testified Father also recorded her phone calls.

Mother testified they went to marriage therapy for a period of time. In Mother’s opinion, the therapy did not help.

Mother testified Father threatened suicide a number of times. October 14, 2005, Father claimed he attempted suicide when he was 16, 24, and 27. Mother testified he threatened suicide in 2007. In 2008, he broke his foot after kicking a chair.

In 2001, Father was arrested for domestic violence. She left the home and went to the mall. According to Mother, he wasn’t charged but received a warning from the Court. He was not ordered to complete anger management. In 2008, Mother participated in domestic violence counseling.

In November, 2008, Mother’s mother came to California and helped Mother pack to move to Arizona. In Arizona, Mother attended counseling at Jewish Family Services and was granted an Order of Protection in 2008 and renewed it in 2009. The children were not the subject of the orders.

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Mother testified that he frequently emailed her and, ultimately, she stopped checking her email because the emails were too frequent.

February of 2010, Mother testified that Father offered her and the girls jewelry. He also told Mother that another woman wanted to be with him and she needed to make a decision whether she was coming back to him.

The parties attended a parenting conference February 11, 2010. Father disputes much of this report. The report reflects Father's wish to have 5/2/2/5 parenting time with the girls and joint legal custody. Mother stated she wanted the children to spend time with their Father but she was documented as stating she wanted to minimize the exchanges and contact/interaction with Father. Mother is documented as requesting the temporary parenting time orders remain in place: Tuesday 8:30 a.m. (with a change to 8:00 a.m.) to 7:30 p.m. and alternating weekends from Friday at 8:30 a.m. to Monday morning when the children return to school or daycare.

November 24, 2008, and May 9, 2009, Mother was emailing and Father gained access to Mother's email account. Mother states Father hacked her accounts.

On cross examination, Mother admitted she left the children with Father when Mother left the home.

Primary caretaker: The parties agree that Mother was previously the primary caretaker of the children-- Father states it was 60/40.

Children's adjustment: Father states the children are well adjusted here. Mother agrees.

Mental/Emotional health issues: Father states the parties engaged in "mutual combat." Dr. Akins reports neither party demonstrates mental health issues of significance. Father has undertaken a considerable amount of counseling to address his anger issues. At one point, he was on medication which, according to the evidence, assisted Father greatly in stabilizing his moods. Exhibit 24.

Father has been diagnosed with Cholinergic Urticaria (hives from heat) disease for which he was on disability. He denies ever attempting suicide. He admits to having been depressed.

Father is renting an 1,800 sq. ft. house which he is not sure he can continue to financially maintain. Mother is currently living with her mother and stepfather.

Father states he is as "active as any Mother" and likes it. He is surprised he has "Mr. Mom" in him.

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Following court orders: Father states he has followed the Court's orders. Father states Mother has followed the Court's orders. Father, however, noted in the Parenting Conference Report Mother took the children to Arizona from California and kept the children from him.

There has been domestic violence in this marriage. The Court notes that it is documented in the Parenting Conference Report: Mother "demonstrates several classic traits of those who have been the victim of domestic violence such as visible fear of being in the presence of a perpetrator." Meanwhile, Father states that Mother was physical with him (She would "hit me like a drum") and also reported to Dr. Akins that he witnessed Mother hit her mother. Dr. Akins opines that Father appears to demonstrate what is typically referred to as situational couples' violence (SVC) rather than appearing to be a classic batterer (CC-DV). Mother has been reported to CPS for neglect of a child; presumably, she was reported by Father.

PARENTING TIME

Father sees the children on Tuesday from 8:30 a.m. to 7:30 p.m. Alternate weekends with Father are Friday 8:30 until Monday morning at 11:30 a.m. Mother requests the pick-up/drop-off should be school and that the Monday morning end earlier so that the children can be dropped off at school. The Court finds pick-up/drop-off at school or daycare to be in the best interests of the children.

Mother objects to the recommendation of Dr. Akins that the parties live fifteen miles or lesser from each other. This does not work for Mother as she needs to find a job in Paradise Valley or Scottsdale. Father objects to Mother moving to Scottsdale or Paradise Valley because of the costs but more importantly the drive for him from South Chandler would not be possible. Further, Father wants the children to remain in the schools there are presently attending because he feels they deserve that stability. The Court has no preference where either party lives; however, the residence locations shall not interfere with parenting time. If it does, the "mover" will provide the transportation.

Father requests the Court adopt the recommendations of Dr. Akins.

Dr. Akins prepared a lengthy custody evaluation in this matter. The Court focuses on the children's wishes and notes that Kaitlyn wishes to spend more time with her Father; Sarah is well attached to both parents; and Faith is a happy, easy-going child too young to interview.

THE COURT FINDS AND DETERMINES that Dr. Akins' report is a balanced, fair approach that has considered the children's best interests and the parents' skills and assets. Dr. Akins finds both parents are fit and that each child is attached to both parents.

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Accordingly, the Court adopts Dr. Akins' recommendation in part and increases Father's time to an overnight every Tuesday night with the time ending the next night at 7:00 p.m. if the children are not in school. If the children are in school, they shall spend their Tuesday with Father from after school to Wednesday at 8:00 a.m. when he shall return them to school.

Father's weekend time, alternate weeks, continues to be Friday after school or at 8:00 a.m. if there is no school, until Monday at 8:00 a.m. if there is school but to 7:00 p.m. if there is no school.

Father shall have twenty-seven (27) days of vacation time: nine (9) days in June, nine (9) days in July, and nine (9) days in August. These days are consecutive. This shall trump the weekly schedule except Father shall have an additional weekend, Friday to Monday each summer month.

The Court adopts the parenting plan presented by Dr. Akins at pages 30-32.

CHILD SUPPORT

Mother has been receiving DES assistance since 2009. She is currently employed at the YMCA as a preschool teacher and makes \$8.99 an hour, 18-23 hours a week. She receives free day care there. She is hoping to achieve a nanny position.

Father's income is \$750.00 a month. Previously, in year's past, Father had a healthy income but now he does not. He attributes this to the economy.

This does not appear to be a Title IV-D matter.

Counsel shall prepare and submit a Child Support Worksheet and Child Support Order based upon the Court's findings and rulings herein.

ASSETS

1998 Camry—to Mother. Mother says it has no value. Father states this car is worth \$3,000.00.

1995—Lumina—to Father.

There shall be no equalization payment.

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DOMAIN NAMES

Mother suggests these have value.

THE COURT FINDS AND DETERMINES Mother has failed to meet her burden of proof.

DEBTS

KinderCare expenses \$3,243.25 for the period of time March, 2009, to March, 2010. Father objects to this because he was told he/they would not have to pay for this. The Court is, as well, concerned that Mother received this bill as Mother's testimony (previously) was that this cost would not be imposed. As such, this is Mother's debt.

Kids Incorporated \$1,080.00 for May, 2010, to August, 2010. Father states this is not owed at all. The Court has insufficient information to address this.

Father is requesting reimbursement of the payment of taxes (\$250.00 divided by two multiplied by seven) for payment on Wife's sole and separate property. The Court deems this a gift to Mother.

TAX RETURNS

Mother wishes to file separately for 2010. She has filed an extension.

Father states Maternal Grandmother claimed the children on her tax returns in 2010 for 2009. Father objects to this.

Father wants to claim two children/one child alternate years.

The Court grants Father's request. Father shall claim two children for 2011 and one child for 2012, etc.

The Court has assessed the credibility of the witnesses, reviewed the exhibits, and considered the best interests of the children and finds and determines:

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Due to the history of domestic violence, the Court finds and determines that sole custody in Mother is in the best interests of the children. While Dr. Akins recommends joint legal custody and a Parenting Coordinator, the Court finds and determines, based upon the evidence, the parties can not afford a Parenting Coordinator and Mother, at this point in time, remains emotionally challenged by Father's controlling behavior. Since Mother, at this point in time, is primary custodian, the Court awards her sole custody. It may be that after one year's time has passed, the parties may have achieved the emotional distance and stability needed to address joint legal custody and more parenting time to Father as well.

IT IS ORDERED Parenting time is awarded to Father alternate weekends, Friday to Monday. Monday is changed to drop off at daycare by 8:00 a.m. Father shall have each week parenting time Tuesday after school/daycare/overnight/return to school/daycare Wednesday a.m. or Wednesday evening. If school is not in session, he shall have the children until Wednesday at 7:00 p.m. and Mondays at 7:00 p.m.

IT IS FURTHER ORDERED that by no later than June 17, 2011, Petitioner's counsel shall submit a formal written *Decree*, consistent with the Court's rulings and approved as to form by the parties for the Court's review and signature.

FILED: Exhibit Worksheet.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.